

The Judiciary Act of 1789

One of the first acts of the new Congress was to establish a federal court system in the Judiciary Act of 1789. The Constitution provided that the judicial branch should be composed of one Supreme Court and such inferior courts as Congress from time to time established. But unlike the legislative provisions, in which the framers clearly spelled out the powers of the Congress, Article III of the Constitution is rather vague on just what the judicial powers should be.

Congress had little precedent to guide it, since in the British system the three court systems -- Common Pleas (private law), King's Bench (criminal law) and Chancery (equity) -- operated independently, and derived their authority from the King's writ. Even during colonial times, when American courts followed English precedent, the frontier society had been too poor in resources and trained personnel to follow British practice. So Congress had, in essence, a clean slate upon which to write. One of the more imaginative steps was combining law and equity into a single court system, thus providing for a more effective and efficient means of delivering justice.

The debate in Congress centered on how much power the Constitution transferred from the states to the federal government. States' rights activists opposed giving the new courts too much authority, while supporters argued that only

a strong federal court system could overcome the weaknesses that had been so apparent during the Confederation period.

Looking back, it is hard to envision how the supremacy of the Constitution provided for in Article VI could possibly have been sustained without a strong federal court system, one empowered to review and, if necessary, overturn state court decisions. Otherwise, the country would have been saddled again with thirteen independent jurisdictions and no means to conform them to a single national standard. "I have never been able to see," James Madison wrote in 1832 commenting on the federal courts, how "the Constitution itself could have been the supreme law of the land; or that the uniformity of Federal authority throughout the parts to it could be preserved; or that without the uniformity, anarchy and disunion could be prevented."

The courts of the United States, as much as the legislative and executive branches, have been instruments of democratic government, binding a diverse people together.

For further reading: D.F. Henderson, *Courts for a New Nation* (1971); Julius Goebel, *Antecedents and Beginnings to 1801* (1971); the first volume of the Holmes Devise, *History of the Supreme Court of the United States*; and Maeva Marcus, ed., *Origins of the Federal Judiciary* (1992).

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An Act to establish the Judicial Courts of the United States

Sec. 1. Be it enacted, That the supreme court of the United States shall consist of a chief justice and five associate justices, any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear the same date on the same day, according to their respective ages.

Sec. 2. That the United States shall be, and they hereby are, divided into thirteen districts, to be limited and called as follows, . . .

Sec. 3. That there be a court called a District Court in each of the aforementioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four sessions, . . .

Sec. 4. That the beforementioned districts, except those of Maine and Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the southern circuit. . . . [T]hat there shall be held annually in each district of said circuits two courts which shall be called Circuit Courts, and shall consist of any two justices of the Supreme Court and the district judge of such districts, any two of whom shall constitute a quorum. Provided, That no district

judge shall give a vote in any case of appeal or error from his own decision; but may assign the reasons of such his decision. . . .

Sec. 9. That the district courts shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall also have exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States. . . . And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States. And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offenses above the description aforesaid. And the trial of issues in fact, in the district courts, in all cases except civil causes of admiralty and maritime jurisdiction,

shall be by jury. . . .

Sec 11. That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought and a citizen of another State. And shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable therein. . . . And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions herinafter provided. . . .

Sec. 13. That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently

with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors or other public ministers, or in which a consul or vice-consul shall be a party. And the trial of issues in fact in the Supreme Court in all actions at law against citizens of the United States shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states in the cases hereinafter specially provided for and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of mandamus, in cases warranted by the principle and usages of law, to any courts appointed, or persons holding office under the authority of the United States. . . .

Sec. 25. That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right,

privilege, or exemption, specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceedings upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before-mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.

Source: U.S. Statutes at Large 1 (1789): 73.

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